IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO.31 OF 2003

1. Smt. Laximi Krishna Mirashi alias Rukmini Krishna Mirashi widow of late Krishna Mirashi,

2. Shri Damodar Krishna Mirashi Shetkar, alias Damu Krishna Mirashi, of major age, service,

3. Smt. Rajani Dmodar Mirashi Shetkar, wife of Damodar Mirashi Shetkar,

4. Shri Ratnakar K.M. Shetkar, of major age, service,

5. Smt. Rashma Ratnakar Mirashi Shetkar, of major age, service

6. Shri Suhas Krishna Mirashi Shetkar, of major age, service,

7. Smt. Suvidha Suhas Mirashi Shetkar,of major age, service, all residing at Amlai;

8. Smt. Shali Mhalu Arsenkar d/o Krishna Mirashi,

9. Shri Mhalu Appa Arsenkar, of major age, businessan, both r/o Velcao;

10. Smt. Sushil Ramnath Dessai, of major age, d/o Krishna Mirashi, housewife,

11. Shri Ramnath Bombo Dessai, of major age, service and both r/o Kalay,

12. Smt. Ratnabai Tulshidas Parsenkar, d/o Krishna

Mirashi, housewife.

13. Shri Tulshidas Datta Parsenkar, of major age, service, both r/o Margao;

14. Smt. Vishranti Premanand Raikar, d/o Krishna Mirashi, housewife;

15. Shri Premanand Nilkanth Raikar, of major age, businessman, both r/o Anandwadi, Sanvordem,Goa;

16. Smt. Vilas Damu Teli, d/o Krishna Mirashi, of major age, housewife;

17. Shri Damu Shankar Teli, of major age, both resident of Curchorem ... PETITIONERS

VERSUS

1. Shri Nagesh Baban Gaonkar, married, of major age

1(a) Smt. Jaya Naguesh Gaonkar,

(b) Smt. Fulu Anand Gaonkar,

(c) Shri Umesh Anand Gaonkar,

(d) Shri Chandrakant Naguesh Gaonkar,

(e) Smt. Geeta Chandrakant Gaonkar;

2. Shri Datta Baban Gaonkar, married,

3. Shri Krishna Baban Gaonkar, since deceased, by his legal representatives:

a) Smt. Veval Krishna Gaonkar widow,

b) Shri Suresh Krishna Gaonkar,

c) Smt. Maya Suresh Gaonkar,

d) Shri Vinayak Krishna Gaonkar,

e) Smt. Vidya Vinayak Gaonkar,

f) Shri Rohidas Krishna Gaonkar,

g) Smt. Nayana Rohidas Gaonkar,

h) Shri Vithal Baban Gaonkar, married, major of age;

4. Shri Pandu Gana Gaonkar, since deceased, by his legal representatives:

a) Shrk Ankush Pandu Gaonkar, married,

b) Smt. Prafulla Pandu Gaonkar,

c) Shri Santosh Pandu Gaonkar, all residing at Mudai, Panchawadi, Ponda, Goa ... RESPONDENTS

Mr. J.E. Coelho Pereira, Sr. advocate, with Mr. V. Korgaonker, Advocate,for the Peitioners.

Mr. U.S. Kolwalkar, Advocate for Respondents Nos. 2 and 3(a,b,c,d).

CORAM : F.I. REBELLO,J.

DATED : JUNE 19, 2003.

ORAL JUDGMENT

Rule. Respondents waive service. Heard forthwith.

2. The Petitioner herein had filed a suit against the Respondents herein for demarcation and other reliefs. It is the case of the Petitioner that the names of the Respondents have been wrongly included in the property which belongs to the Petitioner. The trial Court by its Order dated 19th June, 1996 directed maintenance of status quo thereby not to cause damage to the stone wall barbed wire and not cut the trees existing in the suit property.

The matter came in appeal. The appellate Court has reversed the Order of the trial Court by its Order dated 7-12-2002. That Order is the subject-matter o the present challenge.

3. It is contended on behalf of the Petitioners herein that the order of the trial Court suffers from an error apparent on the face of the record inasmuch as it has directed maintenance of status quo for all practical purposes. The names of both the Petitioner and the Respondents have been shown in the Survey entries. What the trial Court had done was to direct non-disturbance or changing the nature of the property. The appellate Court which reversed the said Order has not correctly applied the principles which the appellate Court

should apply.

4. After considering all the aspects, to my mind the Order of the trial Court is liable to be interfered with considering that the reliefs prayed for by the Petitioner herein was for all purposes to prevent danger or waste to the property and not only dispossession of the Petitioner from the property. However, in the interest of justice it is required that both the Petitioners and the Respondents are directed to maintain the **status quo.**

5. In the light of that, the impugned Order of the appellate Court is set aside. The Order of the trial Court is restored but with a further direction that the Petitioners herein also during the pendency of the suit will not cut the trees existing in the property or change the nature of he property.

Rule made partly absolute accordingly. There shall be no order as to costs.

F.I. REBELLO,J.

ac.